FIRST DIVISION

SKIPPERS UNITED PACIFIC, INC., and J.P. SAMARTZSISMARITIME ENTERPRISES CO., S.A.,
Petitioners,

- *versus* -

JERRY MAGUAD andPORFERIO CEUDADANO,
Respondents.

G.R. No. 166363

Present:

PANGANIBAN, *C.J.*
Chairperson,
YNARES-SANTIAGO,
AUSTRIA-MARTINEZ,
CALLEJO, SR., and
CHICO-NAZARIO, *JJ.*

Promulgated:

August 15, 2006

x- -x

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before this Court is a Petition for Review on *Certiorari* seeking to review and set aside the Decision[1] and Resolution[2] of the Court of Appeals dated 27 July 2004 and 14 December 2004, respectively, in CA-G.R. SP No. 80651, which declared null and void the Resolutions of the National Labor Relations Commission (NLRC) dated 26 May 2003[3] and 8 September 2003.[4]

The antecedent facts of the case are as follows:

Herein petitioners are Skippers United Pacific, Inc., the former manning agency for the vessel MV Hanjin Vancouver, and its foreign principal, J.P. Samartzsis Maritime Enterprises Co., S.A. Herein respondents Jerry Maguad and Porferio Ciudadano were recruited by petitioner Skippers United Pacific, Inc., to work on board the afore-mentioned vessel as 4th Engineer and Bosun, respectively. Respondents lodged a complaint against petitioners before the NLRC. In their Position Paper,[5] they alleged, among other things, that:

> Sometime in June 1998, complainants [herein respondents] were contracted by respondent [herein petitioner] Skippers [United Pacific, Inc.], to work on board the vessel MV "Hanjin Vancouver," as Fitter for a contract period of nine (9) months plus or minus one (1) month pay [by] mutual consent. In a POEA contract of employment,[6] complainant had to work under the following terms and conditions:
>
> JERRY P. MAGUAD
>
> | | | |
> |---|---|---|
> | POSITION | : | 4th Engineer |
> | BASIC MO. SALARY | : | US$536.00 |
> | HOURS OF WORK | : | 48 hours/week |
> | FIXED OVERTIME | : | US$160.80 |
> | OT AFTER 105/HRS | : | US$3.22 |
> | LEAVE PAY | : | US$107.20 |
>
> PORFERIO L. CIUDADANO
>
> | | | |
> |---|---|---|
> | POSITION | : | Bosun |
> | BASIC MO. SALARY | : | US$451.00 |
> | HOURS OF WORK | : | 48 hours/week |
> | FIXED OVERTIME | : | US$135.30 |
> | OT AFTER 105/HRS | : | US$2.71 |
> | LEAVE PAY | : | US$90.20 |
>
> x x x x
>
> However, [these] contracts were adjusted by respondent Skipper's representative in the person of their General Manager, Ms. Gloria N. Almodiel, and was further noted by the Owner's representative Mr. Filippos Karabatsis. The adjustments made were as follows[7]:
>
> JERRY P. MAGUAD
>
> | | | |
> |---|---|---|
> | BASIC MO. SALARY | : | US$915.00 |
> | FIXED OVERTIME | : | US$681.00 (105 hrs) |

LEAVE PAY	:	US$214.00
OVERSEAS ALLOWANCE	:	US$126.00
OT (AFTER 105/HRS)	:	US$6.61

PORFERIO L. CIUDADANO

BASIC MO. SALARY	:	US$609.00
FIXED OVERTIME	:	US$453.00 (105 hrs)
LEAVE PAY	:	US$142.00
OVERSEAS ALLOWANCE	:	US$126.00
OT (AFTER 105/HRS)	:	US$4.40

x x x x

> On or about June 14, 1998, complainants joined [their] vessel of assignment at the port of Korea to work thereon in accordance with the aforesaid contract of employment. Thereafter, [they] performed their official functions and duties diligently and efficiently.
>
> However, on July 29, 1998 at the port of Osaka, Japan, [they were] unceremoniously discharged from the aforesaid vessel and immediately repatriated to Manila without being given any notice of the reason for their discharge and without giving [them] an opportunity to be heard. Despite earnest demands, respondents unjustifiably failed and refused to pay complainants' unexpired portion of [their] contract.[8]

Petitioners, on the other hand, contended that they could not be held liable for illegal dismissal because the respondents were dismissed for cause, that is, for incompetence. The petitioners, in their Position Paper before the NLRC, averred, among other things, that:

> On or about 8 June 1998, complainants [herein respondents] Maguad and Ciudadano were both contracted by respondent [herein petitioner] Skippers United Pacific, Inc. (for and in behalf of its principal, J.P. Samartzsis Maritime Enterprises Co. S.A.) to serve as 4th Engineer and Bosun, respectively for the vessel MV "Hanjin Vancouver" for a contract period of nine (9) months plus or minus one (1) month by mutual consent for the following salaries:
>
> JERRY P. MAGUAD
>
> | | | |
> |---|---|---|
> | BASIC MO. SALARY | : | US$536.00 |
> | FIXED OVERTIME PAY | : | US$160.80 |

OT AFTER 105/HOURS	:	US$3.22
LEAVE PAY	:	US$107.20

PORFERIO L. CIUDADANO

BASIC MO. SALARY	:	US$451.00
FIXED OVERTIME PAY	:	US$135.30
OT AFTER 105/HOURS	:	US$2.71
LEAVE PAY	:	US$90.20

On or about 24 June 1998, complainants boarded the vessel MV Hanjin Vancouver; however, less than one (1) month from their arrival on board said vessel, the vessel's Master reported both complainants' incompetence and the Owners in a telex message dated 21 July 1998 informed herein respondent Skippers United Pacific, Inc. of the urgent need to replace both Maguad and Ciudadano for their incompetence and enormous difficulties produced thereof to the work on board.

On or about 29 July 1998, both complainants were repatriated from Pusan, Korea with herein respondent advancing their repatriation costs.[9]

Consequently, upon repatriation, respondents filed a Complaint for Illegal Dismissal on 14 August 1998 before the Arbitration Branch of the NLRC with prayer for payment of salaries for the unexpired portion of their contract, moral and exemplary damages, and attorney's fees. The Labor Arbiter issued a Decision[10] on 20 September 1999 finding respondents to have been illegally dismissed. The dispositive portion of which reads, thus;

WHEREFORE, premises considered, judgment is hereby rendered declaring that complainants [herein respondents] have indeed been illegally dismissed from their employment. Accordingly, respondents [herein petitioners] are hereby directed to pay [herein respondents] their respective three (3) months' salaries, as follows:

(a) For Jerry P. Maguad – US$5,808.00

(b) Porferio L. Ciudadano – US$3,990.00

On appeal by petitioners, the NLRC *en banc* in its Resolution[11] dated 31 May 2001, remanded the case to the Arbitration Branch of origin for immediate further proceedings for failure of the Labor Arbiter to appreciate material evidence

such as: (1) the logbook extracts submitted by petitioners to corroborate its defense that respondents were dismissed for incompetence and (2) the confirmation letters presented by the respondents showing that they were signed off to transfer to another vessel due to crew reduction per Administration's status and Owner's Orders. Both parties had questioned the authenticity and veracity of the documentary evidence presented by the opposing party.

To conform to the Resolution of the NLRC dated 31 May 2001, the Labor Arbiter conducted further proceedings. The Labor Arbiter rendered a Decision[12] on 13 February 2002 dismissing the respondents for being unfit and incompetent to perform their respective functions, overturning his previous Decision of 20 September 1999. The dispositive portion reads, thus:

> WHEREFORE, in the light of the foregoing premises, the above-entitled case is hereby DISMISSED for being devoid of legal merit.

To justify his findings, the Labor Arbiter made the following discussions, thus:

> After a careful re-evaluation of the evidence on record, this Office finds that it indeed overlooked the fact that there are pieces of evidence for the respondents other than the telex mentioned in the subject Decision. That contrary to its findings in the questioned Decision dated 20 September 1999 that respondents' evidence in support of their defense in this case consists solely of an "uncorroborated telex message," respondents actually have adduced other pertinent evidence such as logbook extracts and the Master's Statement supporting such logbook entries. Be it emphasized at this juncture that in our jurisdiction, it is settled and recognized that logbook entries constitute *prima facie* evidence of the facts contained therein and have enjoy the stamp of presumption of regularity.[13]

Aggrieved, it was the respondents' turn to interpose an appeal before the NLRC *en banc*. The NLRC rendered a Resolution[14] on 26 May 2003 affirming the afore-quoted findings of the Labor Arbiter, thus:

> WHEREFORE, premises considered, the assailed decision is hereby affirmed. Complainant's appeal is dismissed for lack of merit.

Respondents moved for the reconsideration of the foregoing decision of the NLRC. However, said Motion for Reconsideration was denied through a Resolution[15] issued by the NLRC on 8 September 2003. Consequently, respondents filed a Petition for *Certiorari* before the Court of Appeals docketed as CA-G.R. SP No. 80651.

The Court of Appeals rendered a Decision[16] on 27 July 2004 granting the petition and declaring null and void the Resolutions of the NLRC dated 26 May 2003 and 8 September 2003, and reinstating the Decision[17] of the Labor Arbiter dated 20 September 1999, to wit:

> WHEREFORE, in consideration of the foregoing, the petition for certiorari is perforce granted. Accordingly, the Resolutions of the public respondent NLRC dated 26 May 2003 and 8 September 2003 are hereby declared null and void. Accordingly, the Decision of the Honorable Labor Arbiter dated 20 September 1999 is hereby reinstated.

On 26 August 2004, petitioners filed a Motion for Reconsideration of the 27 July 2004 Decision of the Court of Appeals alleging that Skippers United Pacific, Inc., should not be made liable because: (1) it is no longer the manning agency responsible since Sea Power Shipping Enterprises, Inc., and Evic Human Resources Management, Inc., had executed Affidavits of Assumption of Responsibility, and (2) it has complied with the legal requirements for the dismissal of an employee.

The Court of Appeals denied the Motion for Reconsideration in its Resolution dated 14 December 2004 because the grounds and arguments relied upon by the petitioners were already heard and considered by the Court of Appeals in their Decision promulgated on 27 July 2004.

Hence, this Petition.

Petitioners submit that the Court of Appeals committed a reversible error in rendering its Decision and Resolution dated 27 July 2004 and 14 December 2004,

respectively, for they are contrary to law and existing jurisprudence. Hence, petitioners presented before this Court the following issues:

> I Whether or not the warning notices given to respondents substantially [complied] with the requirements of the Labor Code in effecting a valid dismissal.
>
> II Whether or not the Court of Appeals may reinstate a Decision of the Labor Arbiter, which the latter himself reversed and considered flawed.[18]

In the Memorandum[19] filed by petitioners, they maintain that there was just and valid cause for the dismissal of the respondents. Thus, petitioners posit that the only issue relevant to the dismissal of the respondents in this Petition is the question on compliance with the two- notice requirement mandated by the Labor Code, as amended.[20]

The petitioners argue that the Court of Appeals seriously erred in not considering the warning notices issued to respondents as substantial compliance with the requirements laid down in the Labor Code, as amended, in effecting a valid dismissal. According to petitioners, such notices were issued days before respondents were signed-off on 29 July 1998, so that ample opportunity was given to the respondents to defend themselves and refute the accusations against them. Thus, petitioners stand firm on their position that the dismissal of the respondents was with cause and there was compliance with the requirement of due process in effecting a valid dismissal.

Petitioners further claim that it was reversible error on the part of the Court of Appeals to reinstate a Decision of the Labor Arbiter, which the latter himself reversed and considered flawed for his failure to consider other pieces of evidence which were presented by both parties.

In contrast, the respondents raise before this Court the following issues:

> I. Whether or not Rule 45 is proper in the instant case.
>
> II. Whether or not the decision of the Court of Appeals is erroneous.

III. Whether or not petitioner Skippers can be exempted from liability by the execution of Affidavits of Assumption of Responsibility executed by Sea Power Shipping Enterprises, Inc. and Evic Human Resources Management, Inc.

IV. Whether or not private respondents Maguad and Ciudadano are entitled to indemnity equivalent to the unexpired portion of their employment contract.[21]

Respondents in their Memorandum[22] aver that petitioners raised questions of facts when they contended that the documents submitted to the Labor Arbiter already constitute the notices required under respondents' employment contracts, and that these notices served as compliance with due process in effecting a valid dismissal; hence, Rule 45 of the Rules of Court is not the proper mode of appeal before this Court.

They also maintain that their alleged incompetence was not properly proven and their dismissal was tainted with illegality because they were not afforded due process. On this basis, respondents are claiming entitlement to the amount of their salary for the unexpired portion of their employment contract.

Lastly, respondents aver that petitioner Skippers United Pacific, Inc. cannot be exempted from liability despite the execution of the Affidavits of Assumption of Responsibility by Sea Power Shipping Enterprises and Evic Human Resources Management, Inc. because the above-mentioned affidavits are only valid and binding between the principal and the manning agent. It should not affect petitioner Skippers United Pacific, Inc.'s liability towards the seamen, specifically respondents, because the liabilities of the said petitioner as manning agency is joint and solidary with its principal and respondents' actual employer, co-petitioner J.P.Samartzsis Maritime Enterprises Co., S.A.

Given the foregoing arguments raised by both parties, this Court identifies the following issues for resolution in the Petition at bar, *viz*:

I. Can this Court take cognizance of the Petition for Review under Rule 45 of the Rules of Court considering that the petitioners raised issues of facts?

II. Whether the ground of incompetence as a just cause for a valid dismissal has been proven by substantial evidence.

III. Whether the Court of Appeals erred in its findings that there was non-compliance with the two-notice requirement in effecting a valid dismissal as mandated by the Labor Code, as amended.

IV. Whether the respondents are entitled to indemnity equivalent to the unexpired portion of their employment contract.

Although as a rule, only legal issues may be raised in a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, the Court is not precluded from delving into and resolving issues of facts,[23] particularly if the findings of the Labor Arbiter are inconsistent with those of the NLRC and the Court of Appeals; if the findings of the NLRC and the appellate court are contrary to the evidence and the record; and in order to give substantial justice to the parties.[24]

In this case, the Labor Arbiter and the NLRC *en banc* ruled that the respondents were validly dismissed by the petitioners because of incompetence in performing their duties and responsibilities. In effecting such dismissal, the petitioners complied substantially with the two-notice requirement for procedural due process in labor cases. However, the Court of Appeals stated in its27 July 2004 Decision that the respondents' alleged incompetence if any, was not properly proven, and these remained plain allegations without any proof to substantiate the same. Furthermore, petitioners failed to comply with the two-notice requirement in effecting a valid dismissal. Since there are conflicts in the findings of the Court of Appeals, on one hand, and the Labor Arbiter and the NLRC, on the other, it is incumbent upon this Court to resolve the issues of fact in order to give substantial justice to both parties. Hence, this Court can take cognizance of this Petition.

The general rule is that, factual findings of the NLRC, particularly where the NLRC and the Labor Arbiter are in agreement, are deemed binding and conclusive upon the Supreme Court.[25] Such factual findings of labor officials are conclusive and binding when supported by substantial evidence, meaning, that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[26] Thus, the Supreme Court will not uphold erroneous conclusions of the NLRC as when it finds insufficient or insubstantial evidence on record to

support those factual findings. The same holds true when it is perceived that far too much is concluded, inferred, or deduced from the bare or incomplete facts appearing of record.[27]

Accordingly, the rule that the factual findings of the administrative bodies are accorded great weight and respect and even finality by this Court does not apply in the present case because of the apparent conflict in the findings of the administrative bodies and that of the appellate court. This Court therefore finds it necessary to go over the records of the case to determine whether the dismissal of the respondents has been properly proven by substantial evidence.

It must be noted that in termination cases, the burden of proof rests upon the employer to show that the dismissal of the employee is for just cause and failure to do so would mean that the dismissal is not justified. This is in consonance with the guarantee of security of tenure in the Constitution[28] and elaborated in the Labor Code.[29] A dismissed employee is not required to prove his innocence of the charges leveled against him by his employer.[30] The determination of the existence and sufficiency of a just cause must be exercised with fairness and in good faith and after observing due process.[31] Hence, there are two requisites which must be complied with by an employer for a valid dismissal, to wit:

I. the dismissal must be for a just or authorized cause; and,

II. the employee must be afforded due process, *i.e.*, he must be given opportunity to be heard and to defend himself.

The Labor Code, as amended, laid down the just or valid causes in dismissing an employee, thus:

> Art. 282. *TERMINATION BY EMPLOYER*. – An employer may terminate an employment for any of the following causes.
>
> (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
>
> (b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.

In the case before this Court, the ground relied upon by the petitioners in dismissing the respondents is incompetence. Although incompetence or inefficiency as a ground for a valid dismissal is not expressly written in Article 282 as one of the just causes in dismissing an employee, this ground is considered as analogous to those enumerated under said article. Additionally, incompetence is a ground specifically provided for in Section H of the Philippine Overseas Employment Administration (POEA) Standard Employment Contract[32] to validly dismiss an erring seaman. Such incompetence or inefficiency is understood to mean failure to attain work goals or work quotas, either by failing to complete the same within the allotted reasonable period, or by producing unsatisfactory results.[33] In proving the alleged incompetence of the respondents, the Labor Arbiter as well as the NLRC, based their findings on the telefax message,[34] logbook extracts, and the Master's Statement Report.

While going over the records of the case, this Court finds that the logbook extracts presented by the petitioners before the administrative bodies failed to specify the particular acts or omissions of the respondents which apparently displayed their alleged incompetence. Such details are vital in proving whether the respondents are indeed incompetent to perform their assigned duties and responsibilities. While the logbook extracts presented by the petitioners dated 22 July 1998,[35] mentioned that respondent Maguadwas inexperienced because he did not operate E/R Machines satisfactorily, it did not particularly described therein the manner howMaguad operated the machine that would lead to the conclusion that he was inexperienced. With regard to respondent Ciudadano, his alleged incompetence was stated in the logbook extracts dated 24 July 1998,[36] that he was unable to perform safety duties in spite of advices given to him. Again, his alleged incompetence was not specifically stated. Since a logbook contains entries of the daily events in the vessel, it is irregular that the act of the respondents showing

their incompetence were not stated therein with particularity. Hence, absent a more detailed narration in the logbook entry of the circumstances surrounding respondents' alleged incompetence, the same cannot constitute a valid justification for their dismissal.

Additionally, the entries in the logbook stating the alleged incompetence of the respondents are contrary to what was stated in the confirmation letters issued by the captain of the vessel on the same date that the respondents were repatriated to Manila. The said confirmation letters[37] contain statements that the respondents were signed off in order to transfer them to another vessel due to crew reduction. It was not cited in those letters that respondents were signed off because of their incompetence to perform their duties. Ship Captain G. Aravadinos Karlatos duly signed such confirmation letters, which also bear the seal of the vessel M/VHanjin Vancouver.

Moreover, the Master's Statement Report,[38] presented by the petitioners, to corroborate their claim that the dismissal of the respondents was for just cause *i.e.*, incompetence, was issued 17 days after the respondents were repatriated to Manila and two months after the complaint for illegal dismissal was instituted by the respondents before the NLRC. Consequently, such report can no longer be a fair and accurate assessment of the respondents' competence as the same was presented only after the complaint was filed. Clearly, its execution was a mere afterthought in order to justify the dismissal of the respondents, which had long been effected before the report was made; hence, such report is a self-serving one.

Accordingly, this Court agrees with the Court of Appeals that it was not proven through substantial evidence that the respondents were dismissed for just cause. The incompetence of the respondents as just cause for their dismissal was not properly proven and the evidence submitted by the petitioners before the administrative bodies are not enough to sustain the dismissal of the respondents. For this reason, this Court is not convinced that the respondents were legally dismissed.

Nonetheless, even if there is a valid ground in dismissing the respondents, the petitioners cannot just dismiss them outright. The petitioners must also comply with the second requisite, which is, to afford the respondents due process.

The second requisite that must be complied with by an employer for a valid dismissal is to afford the erring employee due process. The due process requirement is not a mere formality that may be dispensed with at will. Its disregard is a matter of serious concern since it constitutes a safeguard of the highest order in response to man's innate sense of justice.[39] The Labor Code does not, of course, require a formal or trial type proceeding before an erring employee may be dismissed. This is especially true in the case of a vessel on the ocean or in a foreign port. The minimum requirement of due process in termination proceedings, which must be complied with even with respect to seamen on board a vessel, consists of notice to the employees intended to be dismissed and the grant to them of an opportunity to present their own side of the alleged offense or misconduct, which led to the management's decision to terminate.[40] To meet the requirements of due process, the employer must furnish the worker sought to be dismissed with two written notices before termination of employment can be legally effected, *i.e.*, (1) a notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the subsequent notice after due hearing which informs the employee of the employers decision to dismiss him.[41]

Now, in the case at bar, this Court is convinced that the petitioners also failed to comply with the second requisite in effecting a valid dismissal, which is to afford the respondents due process. As previously discussed herein, to meet the requirements of due process, it is indispensable upon the employer to furnish the employee sought to be dismissed with two written notices. The warning notices[42] given by the petitioners to the respondents cannot be deemed as substantial compliance with the two-notice requirement as mandated by the Labor Code in effecting a valid dismissal. Those warning notices did not specify in detail the particular acts or omissions committed by the respondents which showed their incompetence. Worse still it did not apprise them that their dismissal was sought. Such notices were stated in a general manner. It was never mentioned therein that the petitioners would dismiss the respondents. Although the petitioners claimed that those notices were given to the respondents days before they were repatriated, the same leaves much to be desired.

The Labor Code requires both notice and hearing; notice alone will not suffice. The requirement of notice is intended to inform the employee concerned of the employer's intent to dismiss him and the reason for the proposed dismissal. On the other hand, the requirement of hearing affords the employee an opportunity to answer his employer's charges against him and accordingly to defend himself therefrom before dismissal is effected.[43] In this case, after the warning notices were given to the respondents, the petitioners did not give the respondents an opportunity to present their sides by conducting a hearing as provided for in Section 17 of the POEA Contract.[44] Instead, the petitioners, with breathless speed, ordered the repatriation of the erring employees toManila. Therefore, the second notice, which must be given after hearing to inform the respondents of the petitioners' decision to dismiss them, was not complied with. In view of that, the Court of Appeals correctly ruled that there was non-compliance with the two-notice requirement in effecting a valid dismissal.

Inasmuch as the respondents were illegally dismissed because the ground relied upon by the petitioners were not substantially proven and there was non-compliance with the two-notice requirement in effecting a valid dismissal, they are entitled to the payment of indemnity. However, this Court does not agree with the findings of the Court of Appeals that the provisions of Section 10 of Republic Act No. 8042, otherwise known as the Migrant Workers' Act of 1995, is the law applicable in computing the amount of indemnity to be paid to the respondents who have been illegally dismissed. The said Section 10 of Republic Act No. 8042 partly provides:

> In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the worker shall be entitled to the full reimbursement of his placement fee with interest at twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less.

This Court held in the case of *Marsaman Manning Agency, Inc. v. National Labor Relations Commission*,[45] thus:

> A plain reading of Sec. 10 clearly reveals that the choice of which amount to award an illegally dismissed overseas contract worker, *i.e.*, whether his salaries

> for the unexpired portion of his employment contract or three (3) months' salary for every year of the unexpired term, whichever is less, comes into play only when the employment contract concerned has a term of at least one (1) year or more. This is evident from the words "for every year of the unexpired term" which follows the words "salaries x x x for three months." To follow petitioners' thinking that private respondent is entitled to three (3) months salary only simply because it is the lesser amount is to completely disregard and overlook some words used in the statute while giving effect to some. This is contrary to the well-established rule in legal hermeneutics that in interpreting a statute, care should be taken that every part or word thereof be given effect since the law-making body is presumed to know the meaning of the words employed in the statute and to have used them advisedly. *Ut res magisvaleat quam pereat.*

Furthermore, in the case of *Phil. Employ Services and Resources, Inc. v. Paramio,*[46] citing the case of *Skippers Pacific, Inc. v. Skippers Maritime Service, Ltd.*,[47] this Court ruled that an overseas Filipino worker who is illegally terminated should be entitled to his salary equivalent to the unexpired portion of his employment contract if such contract is less than one year.

Having said that, we apply the foregoing principles to the present case. Since the contract period of the respondents is less than one year, more particularly, nine months plus or minus one month by mutual consent; and they were illegally dismissed, then they are entitled to their salaries equivalent to the unexpired portion of their contract, and not just to three months salary.

With respect to the petitioner Skippers United Pacific, Inc.'s claim that it be exempted from liability because it is no longer the manning agency responsible to the respondents since Sea Power Shipping Enterprises, Inc. and Evic Human Resources Management, Inc. had executed Affidavits of Assumption of Responsibility, this Court will not sustain such a claim. In Section 1 of Rule II of the POEA Rules and Regulations, it states that:

> Section 1. Requirements for Issuance of License. – Every applicant for license to operate a private employment agency or manning agency shall submit a written application together with the following requirements:
>
> x x x
>
> f. A verified undertaking stating that the applicant:

x x x

> (3) Shall assume joint and solidary liability with the employer for all claims and liabilities which may arise in connection with the implementation of the contract; including but not limited to payment of wages, death and disability compensation and repatriation.

Accordingly, despite the execution of the Affidavits of Assumption of Responsibility by other manning agencies, the petitioner Skippers United Pacific Inc. cannot exempt itself from all the claims and liabilities arising from the implementation of the contract executed between the said petitioner and the respondents. It is very clear from the above-cited provisions of the Rules and Regulations of the POEA that the manning agency shall assume joint and solidary liability with the employer. Joint and solidary liability is meant to assure aggrieved workers of immediate and sufficient payment of what is due them. [48] The reason for this ruling was given by this Court in *Catan v. National Labor Relations Commission,* [49] which is reproduced in part below:

> This must be so, because the obligations covenanted in the recruitment [manning] agreement entered into by and between the local agent and its foreign principal are not coterminus with the term of such agreement so that if either or both of the parties decide to end the agreement, the responsibilities of such parties towards the contracted employees under the agreement do not at all end, but the same extends up to and until the expiration of the employment contracts of the employees recruited and employed pursuant to the said recruitment agreement. Otherwise, this will render nugatory the very purpose for which the law governing the employment of workers for foreign jobs abroad was enacted.

Also, according to Section 10, paragraph 2 of Republic Act No. 8042, [50] the agency which deployed the employees whose employment contract were adjudged illegally terminated, shall be jointly and solidarily liable with the principal for the money claims awarded to the aforesaid employees. [51] Therefore, petitioner Skippers Pacific United, Inc. as the manning agency which hired the respondents is jointly and solidarily liable with its principal and co-petitioner J.P. Samartzsis Maritime Enterprises Co., S.A., for the money claims of the respondents. The Affidavits of Assumption of Responsibility, though valid as between petitioner Skippers United Pacific Inc. and the other two manning agencies, are not enforceable as against the respondents because the latter were not

parties to those agreements. The provisions of the POEA Rules and Regulations are clear enough that the manning agreement extends up to and until the expiration of the employment contracts of the employees recruited and employed pursuant to the said recruitment agreement. Hence, despite the execution of the aforementioned affidavits, petitioner Skippers United Pacific Inc. cannot exempt itself from the liabilities and responsibilities towards the respondents.

WHEREFORE, premises considered, the instant Petition is **DENIED**. The Decision and Resolution of the Court of Appeals dated 27 July 2004 and 14 December 2004, respectively, in CA-G.R. SP No. 80651, finding that respondents had been illegally dismissed and that petitioners failed to comply with the two-notice requirement of due process in effecting a valid dismissal, are hereby **AFFIRMED** with **MODIFICATION**. The petitioners Skippers United Pacific, Inc. and J.P. Samartzsis Maritime Enterprises Co., S.A. are hereby ORDERED, jointly and severally, to pay respondents Jerry Maguad and Porferio Ciudadano the amount of their salaries corresponding to the unexpired portion of their employment contract. Costs against petitioners.

SO ORDERED.

MINITA V. CHICO-NAZARIO
Associate Justice

WE CONCUR:

ARTEMIO V. PANGANIBAN
Chief Justice
Chairperson

CONSUELO YNARES-SANTIAGO
Associate Justice

MA. ALICIA AUSTRIA-MARTINEZ
Associate Justice

ROMEO J. CALLEJO, SR.
Associate Justice

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ARTEMIO V. PANGANIBAN
Chief Justice

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[1] Penned by Associate Justice Bienvenido L. Reyes, with Associate Justices Eugenio S. Labitoria and Rosalinda Asuncion-Vicente, concurring, *rollo*, pp. 23-42.
[2] Id. at 43-44.
[3] Penned by Commissioner Angelita A. Gacutan with Presiding Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay, concurring, CA *rollo*, pp. 31-40.
[4] Id. at 42-43.
[5] Id. at 44-53.
[6] Id. at 57-58.
[7] Id. at 59-60.
[8] Id. at 45-47.
[9] *Rollo*, pp. 26-27
[10] Id. at 45-51.
[11] Penned by Presiding Commissioner Lourdes C. Javier with Commissioners Ireneo B. Bernardo and Tito F. Genilo, concurring, CA *rollo*, pp. 78-81.
[12] Penned by Labor Arbiter Cresencio G. Ramos, Jr., *rollo*, pp. 52-55.
[13] Id.
[14] Id. at 56-66.
[15] CA *rollo,* 42-43.
[16] Id. at 223-242.
[17] *Rollo,* pp. 23-42.
[18] Id. at 135.
[19] Id. at 127-152.
[20] Article 277. Miscellaneous Provisions. (a) x x x

(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment.

[21] *Rollo*, p. 163.

[22] Id. at 157-173.

[23] Recognized exceptions to this rule are: (1) when the findings are grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making the findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellee and the appellant; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; (10) when the findings of facts are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which if properly considered, would justify a different conclusion (*Langkaan Realty Development, Inc. v. United Coconut Planters Bank*, G.R. No. 139437, 8 December 2000, 347 SCRA 542, 549; *Nokom v. National Labor Relations Commissions*, 390 Phil. 1228, 1243 [2000]; *Commissioner of Internal Revenue v. Embroidery and Garments Industries (Phils.), Inc*., 364 Phil. 541, 546-547 [1999*]; Sta. Maria v. Court of Appeals*, 349 Phil. 275, 282-283 [1998]).

[24] *Nasipit Lumber Company v. National Organization of Workingmen (NOWM)*, G.R. No. 146225, 25 November 2004, 444 SCRA 158, 170.

[25] *Permex, Inc. v. National Labor Relations Commission*, 380 Phil. 79, 85 (2000).

[26] *Aklan Electric Cooperative Incorporated v. National Labor Relations Commission*, 380 Phil. 225, 238 (2000).

[27] *Malayang Samahan ng mga Manggagawa sa M. Greenfield v. Ramos*, 383 Phil. 329, 368 (2000).

[28] Article 13, Section 3, of the 1987 Philippine Constitution.

[29] Article 277(b) of the Labor Code, as amended.

[30] *Starlite Plastic Industrial Corp. v. National Labor Relations Commission*, G.R. No. 78491, 16 March 1989, 171 SCRA 315, 323.

[31] *Fil-Pride Shipping Co., Inc. v. National Labor Relations Commission*, G.R. No. 97068, 5 March 1993, 219 SCRA 576, 581.

[32] Section H of the POEA Standard Employment Contract reads:

1. x x x.
2. The master shall have the right to discharge or sign off the seaman at any place abroad in accordance with the terms and conditions of this contract and specially for the following reasons:

a. If the seaman is incompetent, x x x. (CA *rollo*, p. 48.)

[33] *Buiser v. Leogardo*, 216 Phil. 144, 152 (1984).

[34] Telefax message from J.P. Samartzsis Maritime Enterprises Co., S.A. dated 21 July 1998.

Reference is made to out fax of both (yesterday)

Pls. attend substitution of full crew due incompetence and erroneous difficulties produced thereof to the works and board the vessel as full:

x x x

B. 4th Engin Maguad Jerry: They must sign-off both at Tokyo on 37/7 or latest at Pusan on 30/7

x x x

D. Bosun Ciudadano Proferio: He will sign-off and we shall send ourselves one ex-Samartzsis crew.

Needless to underline that We actually have best wages (T.C.C.) New Ships first class owners and reliability in all respects and payments thus we simply and most emphatically require best/able crew which will contribute and produce the appropriate conditions in our cooperation.
We kindly remind the obvious rule that you should not send onboard a man with doubtful competency for a key position or any position. (CA *rollo*, pp. 231-232.)

[35] Logbook Extract dated 22 July 1998.
0235 Ch. Engineer reported that both 3rd Engineer Olordiva 16 N.2. Maguad Jerry 4th Engineer are inexperienced and they are not operate/manage E/R Machineries satisfactory. He required substitution with experienced Eng'rs. (Id. at 232.)

[36] Logbook Extract dated 24 July 1998
1200. p' cloudy gale high sea very good CH OFF advised that Bosun Ciudadano P. and Fitter Alegado L. are unable to perform safety duties inspite of advises given to them. These are not capable to perform their duties rendering unsafety for ship. (Id.)

[37] The confirmation letters were marked as Annexes C and D found in the CA *rollo,* pp. 61-62.

[38] Master's Statement Report of inefficiency indiscipline dated 15 October 1998
To whom it may concern:
The undersigned G. Aravantinos Master of the above vessel hereby report the following in connection with inefficiency and indiscipline of the following seamen onboard the vessel under my command.
1. Maguad Jerry – 4th Engineer
He was totally inexperience and inefficient in his duties putting ship's safety in risk and endangering the vessel.
x x x
4. Ciudadano Porferio – Bosun
He was inexperience and unable to perform safety his duties. (Id. at 233.)

[39] *Shoemart, Inc. v. National Labor Relations Commission*, G.R. No. 74229, 11 August 1989, 176 SCRA 385, 390.

[40] *Klaveness Maritime Agency, Inc. v. Palmos*, G.R. Nos. 102310-12, 20 May 1994, 232 SCRA 448, 457.

[41] *Estiva v. National Labor Relations Commission*, G.R. No. 95145, 5 August 1993, 225 SCRA 169, 175.

[42] To Bosun
Ciudadano, Porferio
Warning Notice
You have repeatedly failed to comply with four officers' orders and you do not carry-out the works as per your duties.
This is a warning to you for future compliance according to your contract.

To 4th Engineer
Jerry Maguad
Warning notice
You have last night during your duty stopped the boiler without informing your superior officer with result of IFO temp to fall down and endanger the safety operation of the engines/ship.
This is last warning to you after my previous notices for future safe execution of duties as per your contract. (CA *rollo*, p. 234.)

[43] *Century Textile Mills, Inc. v. National Labor Relations Commission*, G.R. No. L-77859, 25 May 1988, 161 SCRA 528, 535.

[44] The Master shall comply with the following disciplinary procedures against an erring seafarer:

A. The Master shall furnish the seafarer with a written notice containing the following:
1. Grounds for the charges as listed in Section 33 of this Contract or analogous act constituting the same.

2. date, time and place for a formal investigation of the charges against the seafarer concerned.

B. The Master or his authorized representative shall conduct the investigation or hearing, giving the seafarer the opportunity to explain or defend himself against the charges. These procedures must be duly documented and entered into the ship's logbook.

C. If after the investigation or hearing, the Master is convinced that imposition of a penalty is justified, the Master shall issue a written notice of penalty and the reasons for it to the seafarer, with copies furnished to the Philippines agent.

[45] 371 Phil. 827, 840-841 (1999).

[46] G.R. No. 144786, 15 April 2004, 427 SCRA 732, 749.

[47] 440 Phil. 906, 922 (2002).

[48] *OSM Shipping Philippines, Inc. v. National Labor Relations Commission*, 446 Phil. 793, 806 (2003).

[49] G.R. No. L-77279, 15 April 1988, 160 SCRA 691, 695.

[50] Section 10. *Money Claims*. – x x x

The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law shall be answerable for all money claims or damages that may be awarded to the workers. If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.

[51] *Phil. Employ Services and Resources, Inc. v. Paramio*, supra note 44.